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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/592,002	09/07/2006	Jurgen Blank	68193-025	6772
27305	7590	06/28/2010		
HOWARD & HOWARD ATTORNEYS PLLC			EXAMINER	
450 West Fourth Street			BASICHAS, ALFRED	
Royal Oak, MI 48067				
			ART UNIT	PAPER NUMBER
			3743	
			MAIL DATE	DELIVERY MODE
			06/28/2010	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/592,002

**Applicant(s)**

BLANK ET AL.

**Examiner**

Alfred Basichas

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/CD)  
Paper No(s)/Mail Date 6/22/10
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Objections*

1. Claims 1-5 are objected to because of the following informalities: The term "characterized in that" should be changed to --comprising--.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 4, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Krohn (5,787,874), which shows all of the claimed limitations. For example:

1. Gas regulating fitting for a gas fire or the like with a thermoelectric flame failure device valve and a main valve which serve jointly both as a flame failure device and as a means of dividing the flow of gas into a flow of gas for a main burner and a pilot burner, with a control unit positioned downstream of the main valve for the flow of gas flowing to the main burner and with additional, secondary functional elements, characterized in that the gas regulating fitting has a sensor 11 by means of which the operating condition of the main burner 2 can be ascertained, whereby the sensor is connected to the thermoelectric flame failure device valve 5 in such a way that on a change in the operating condition of the main burner from

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"On" to "Off", a signal emitted by the sensor causes the thermoelectric flame failure device valve to assume its closed position (see at least col. 2, lines 56-62).

2. Gas regulating fitting according to patent claim 1, characterized in that a time delay element 20 is positioned between the sensor and the thermoelectric flame failure device valve.

4. Gas regulating fitting according to patent claim 1 or 2, characterized in that the sensor consists of a temperature sensor which ascertains the operating condition of the main burner via the temperature at the main burner (see at least col. 2, lines 56-62).

5. Gas regulating fitting according to patent claim 1 or 2, characterized in that the sensor is connected to the control unit 12 in order to ascertain the operating condition of the main burner.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krohn (5,787,874) in view of Welz (6,247,919). Krohn discloses substantially all of the claimed limitations, but fails to specifically recite the sensor being a flow sensor. Welz teaches a burner control system including a flow sensor 86, so as to provide for precise flow measurement and control (see at least col. 9, lines 5-25). Accordingly, it would have been obvious to one having ordinary skill in the art at the time of invention to incorporate the flow sensor as taught by Welz into the invention disclosed by Krohn, so as to provide for precise flow measurement and control.

***Claim Rejections - 35 USC § 103***

8. Claims 1-5 are rejected under 35 U.S.C. 103(a) as obvious over Heatec (EP1188989) and Saunier (FR2561757) as applied in applicant's international application no. PCT/EP2005/002522.

***Response to Arguments***

9. Applicants' arguments with regard to the rejected claims have been considered, but are not deemed fully persuasive.

a. Applicant asserts that the rejection of the claims as obvious over Heatec and Saunier is improper because the examiner provides "no explanation whatsoever" as to the pertinence of these references and the reasoning for the rejection. Nevertheless, the international application no. PCT/EP2005/002522 clearly sets forth reasoning to support the rejection of the claims. To overcome the rejection applicant is required to address the issues raised in the international application and explain why the reasoning set forth by the international patent examiner fails to support the obviousness rejection of the claims. (As regards an English translation of the of the German document, applicant is in the best position to have such a document.)

b. Applicant further asserts that Krohn recites only one valve to applicant's two valves as allegedly recited in the claims. Nevertheless, the claim clearly recites "a thermoelectric flame failure device valve and a main valve which serve jointly both as a flame failure device and as a means for dividing the flow of gas..." Given it broadest reasonable interpretation, there is nothing in the claim to suggest two separate and distinct valves as alleged by applicant. In fact, the claim language actually suggests the opposite in reciting "which serve jointly."

c. Applicant further asserts that Krohn fails to disclose a control unit "downstream" of the valve. Nevertheless, Krohn clearly shows control unit 12

positioned at the opposite end of valve device 5 from the gas inflow line 21, which makes it "downstream" of the valve (see at least fig. 1).

d. Applicant further asserts that Krohn fails to disclose a sensor that provides a signal to cause the valve to close. Nevertheless, Krohn clearly and explicitly recites that "thermoelectric sensor element 13" detects when the burner is extinguished and thus shut down the whole valve 5 (see at least col. 2, lines 63-67).

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Basichas whose telephone number is 571 272

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4871. The examiner can normally be reached on Monday through Friday during regular business hours.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center telephone number is 571 272 3700.

June 28, 2010

/Alfred Basichas/  
Primary Examiner, Art Unit 3743